

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1120

Introduced by Byars, 30

Read first time January 15, 2002

Committee: Judiciary

A BILL

1 FOR AN ACT relating to civil rights; to amend sections 13-1102,
2 20-113, 48-1001 to 48-1010, 48-1125, 48-1126, 48-1220 to
3 48-1227.01, 83-1201, and 83-1202.01, Reissue Revised
4 Statutes of Nebraska, and section 83-1066, Revised
5 Statutes Supplement, 2000; to waive state immunity for
6 suits authorized by federal employment discrimination
7 laws as prescribed; to name the Nebraska Equal Pay Act;
8 to state policy relating to the use of community-based
9 treatment for persons with mental disabilities; to
10 provide duties for the Department of Health and Human
11 Services; to harmonize provisions; and to repeal the
12 original sections.
13 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-1102, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 13-1102. In addition to any other powers which it may
4 now have, each municipality and each county shall have without any
5 other authority the following powers:

6 (1) To acquire, whether by construction, purchase,
7 devise, gift, or lease, or any one or more of such methods, one or
8 more projects, which shall be located within this state, and may be
9 located within, without, partially within, or partially without the
10 municipality or county;

11 (2) To lease to others any or all of its projects for
12 such rentals and upon such terms and conditions as the governing
13 body may deem advisable and as shall not conflict with the
14 provisions of sections 13-1101 to 13-1110;

15 (3) To finance the acquisition, construction,
16 rehabilitation, or purchase of projects in blighted areas. The
17 power to finance such projects in blighted areas shall mean and
18 include the power to enter into any type of agreement, including a
19 loan agreement, when the other party to the agreement agrees (a) to
20 use the proceeds of money provided under the agreement to pay the
21 costs of such acquisition, construction, rehabilitation, or
22 purchase and any costs incident to the issuance of the related
23 bonds and the funding of any reserve funds, (b) to be bound by the
24 terms of the Act Prohibiting Unjust Discrimination in Employment
25 Because of Age, the Nebraska Equal Pay Act, and the Nebraska Fair
26 Employment Practice Act, and sections 48-1219 to 48-1227,
27 regardless of the number of employees, and (c) to make payments to
28 the municipality or county sufficient to enable it to pay on a

1 timely basis all principal, redemption premiums, and interest on
2 the related revenue bonds issued to provide such financing, and any
3 amounts necessary to repay such municipality or county for any and
4 all costs incurred by it that are incidental to such financing.
5 Title to any such project in a blighted area need not be in the
6 name of the municipality or county, but may be in the name of a
7 private party;

8 (4) To issue revenue bonds for the purpose of defraying
9 the cost of acquiring, improving, or financing any project or
10 projects, including the cost of any real estate previously
11 purchased and used for such project or projects, or the cost of any
12 option in connection with acquiring such property, and to secure
13 the payment of such bonds as provided in sections 13-1101 to
14 13-1110, which revenue bonds may be issued in two or more series or
15 issues where deemed advisable, and each such series or issue may
16 contain different maturity dates, interest rates, priorities on
17 revenue available for payment of such bonds and priorities on
18 securities available for guaranteeing payment thereof, and such
19 other differing terms and conditions as are deemed necessary and
20 are not in conflict with the provisions of sections 13-1101 to
21 13-1110; and

22 (5) To sell and convey any real or personal property
23 acquired as provided by subdivision (1) of this section, and make
24 such order respecting the same as may be deemed conducive to the
25 best interest of the municipality or county, except + PROVIDED,
26 that such sale or conveyance shall be subject to the terms of any
27 lease but shall be free and clear of any other encumbrance.

28 No municipality or county shall have the power to (a)

1 operate any project, referred to in this section, as a business or
2 in any manner except as the lessor thereof, (b) lease any project
3 acquired under powers conferred by this section for use principally
4 for commercial feeding of livestock, (c) issue bonds under this
5 section principally for the purpose of financing the construction
6 or acquisition of commercial feeding facilities for livestock, or
7 (d) acquire any project or any part thereof by condemnation.

8 Sec. 2. Section 20-113, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 20-113. Any incorporated city may enact ordinances and
11 any county may adopt resolutions which are substantially equivalent
12 to the Act Prohibiting Unjust Discrimination in Employment Because
13 of Age, the Nebraska Equal Pay Act, the Nebraska Fair Employment
14 Practice Act, the Nebraska Fair Housing Act, and sections 20-126 to
15 20-143 ~~and 48-1219 to 48-1227~~ or which are more comprehensive than
16 such acts and sections in the protection of civil rights. No such
17 ordinance or resolution shall place a duty or liability on any
18 person, other than an employer, employment agency, or labor
19 organization, for acts similar to those prohibited by section
20 48-1115. Such ordinance or resolution may include authority for a
21 local agency to seek an award of damages or other equitable relief
22 on behalf of the complainant by the filing of a petition in the
23 district court in the county with appropriate jurisdiction. The
24 local agency shall have within its authority jurisdiction
25 substantially equivalent to or more comprehensive than the Equal
26 Opportunity Commission or other enforcement agencies provided under
27 such acts and sections and shall have authority to order backpay
28 and other equitable relief or to enforce such orders or relief in

1 the district court with appropriate jurisdiction. Certified copies
2 of such ordinances or resolutions shall be transmitted to the
3 commission. When the commission determines that any such city or
4 county has enacted an ordinance or adopted a resolution that is
5 substantially equivalent to such acts and sections or is more
6 comprehensive than such acts and sections in the protection of
7 civil rights and has established a local agency to administer such
8 ordinance or resolution, the commission may thereafter refer all
9 complaints arising in such city or county to the appropriate local
10 agency. All complaints arising within a city shall be referred to
11 the appropriate agency in such city when both the city and the
12 county in which the city is located have established agencies
13 pursuant to this section. When the commission refers a complaint
14 to a local agency, it shall take no further action on such
15 complaint if the local agency proceeds promptly to handle such
16 complaint pursuant to the local ordinance or resolution. If the
17 commission determines that a local agency is not handling a
18 complaint with reasonable promptness or that the protection of the
19 rights of the parties or the interests of justice require such
20 action, the commission may regain jurisdiction of the complaint and
21 proceed to handle it in the same manner as other complaints which
22 are not referred to local agencies. In cases of conflict between
23 this section and section 20-332, for complaints subject to the
24 Nebraska Fair Housing Act, section 20-332 shall control.

25 Any club which has been issued a license by the Nebraska
26 Liquor Control Commission to sell, serve, or dispense alcoholic
27 liquor shall have that license revoked if the club discriminates
28 because of race, color, religion, sex, familial status as defined

1 in section 20-311, handicap as defined in section 20-313, or
2 national origin in the sale, serving, or dispensing of alcoholic
3 liquor to any person who is a guest of a member of such club. The
4 procedure for revocation shall be as prescribed in sections
5 53-134.04, 53-1,115, and 53-1,116.

6 Sec. 3. Section 48-1001, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 48-1001. (1) The Legislature hereby finds that the
9 practice of discriminating in employment against properly qualified
10 persons because of their age is contrary to American principles of
11 liberty and equality of opportunity, is incompatible with the
12 Constitution, deprives the state of the fullest utilization of its
13 capacities for production, and endangers the general welfare.

14 (2) Hiring bias against workers over forty years of age
15 deprives the state of its most important resource of experienced
16 employees, adds to the number of persons receiving public
17 assistance, and deprives older people of the dignity and status of
18 self-support.

19 (3) The right to employment otherwise lawful without
20 discrimination because of age, where the reasonable demands of the
21 position do not require such an age distinction, is hereby
22 recognized as and declared to be a right of all the people of the
23 state which shall be protected as provided in ~~sections 48-1001 to~~
24 ~~48-1009~~ the Act Prohibiting Unjust Discrimination in Employment
25 Because of Age.

26 (4) It is hereby declared to be the policy of the state
27 to protect the right recognized and declared in subsection (3) of
28 this section and to eliminate all such discrimination to the

1 fullest extent permitted. ~~Sections 48-1001 to 48-1009~~ The act
2 shall be construed to effectuate such policy.

3 Sec. 4. Section 48-1002, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 48-1002. ~~As used in sections 48-1001 to 48-1010~~ For
6 purposes of the Act Prohibiting Unjust Discrimination in Employment
7 Because of Age, unless the context otherwise requires:

8 (1) Person shall include one or more individuals,
9 partnerships, limited liability companies, associations, labor
10 organizations, corporations, business trusts, legal
11 representatives, or any organized group of persons;

12 (2) Employer shall mean any person having in his or her
13 employ twenty-five or more individuals and includes the State of
14 Nebraska, governmental agencies, and political subdivisions,
15 regardless of the number of employees, any person acting for or in
16 the interest of an employer, directly or indirectly, and any party
17 whose business is financed in whole or in part under the Nebraska
18 Investment Finance Authority Act but such term shall not include
19 (a) the United States or (b) a corporation wholly owned by the
20 government of the United States;

21 (3) Labor organization shall mean any organization of
22 employees which exists for the purpose, in whole or in part, of
23 collective bargaining or of dealing with employers concerning
24 grievances, terms, or conditions of employment, or for other mutual
25 aid or protection in connection with employment;

26 (4) Employee shall mean an individual employed by any
27 employer; and

28 (5) Employment agency shall mean any person regularly

1 undertaking with or without compensation to procure employees for
2 an employer or to procure for employees opportunities to work for
3 an employer and includes an agent of such a person, but shall not
4 include an agency of the United States, except that such term shall
5 include the United States Employment Service and the system of
6 state and local employment services receiving federal assistance.

7 Sec. 5. Section 48-1003, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 48-1003. (1) The prohibitions of ~~sections 48-1001 to~~
10 ~~48-1009~~ the Act Prohibiting Unjust Discrimination in Employment
11 Because of Age shall be limited to the employment of individuals
12 who are at least forty years of age but less than seventy years of
13 age.

14 (2) Nothing contained in ~~sections 48-1001 to 48-1009~~ the
15 act shall be construed as making it unlawful for an employer,
16 employment agency, or labor organization (a) to take action
17 otherwise prohibited under the provisions of ~~sections 48-1001 to~~
18 ~~48-1009~~ the act when age is a bona fide occupational qualification
19 reasonably necessary to the normal operation of the particular
20 business, or when the differentiation is based on reasonable
21 factors other than age, such as physical conditions, or (b) to
22 discharge or otherwise discipline an employee for good cause.

23 Sec. 6. Section 48-1004, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 48-1004. (1) It shall be an unlawful employment practice
26 for an employer:

27 (a) To refuse to hire, to discharge, or otherwise to
28 discriminate against any individual with respect to his or her

1 terms, conditions, or privileges of employment, otherwise lawful,
2 because of such individual's age, when the reasonable demands of
3 the position do not require such an age distinction; or

4 (b) To willfully utilize in the hiring or recruitment of
5 individuals for employment otherwise lawful, any employment agency,
6 placement service, training school or center, labor organization,
7 or any other source which so discriminates against such individuals
8 because of their age.

9 (2) It shall be an unlawful employment practice for any
10 labor organization to so discriminate against any individual or to
11 limit, segregate, or classify its membership in any way which would
12 deprive or tend to deprive such individual of otherwise lawful
13 employment opportunities, or would limit such employment
14 opportunities or otherwise adversely affect ~~his~~ the individual's
15 status as an employee or as an applicant for employment, or would
16 ~~affect adversely his~~ affect the individual's wages, hours, or
17 employment.

18 (3) It shall be an unlawful employment practice for any
19 employer or labor organization to discharge, expel or otherwise
20 discriminate against any person, because ~~he~~ the person opposed any
21 unlawful employment practice specified in ~~sections 48-1001 to~~
22 ~~48-1009~~ the Act Prohibiting Unjust Discrimination in Employment
23 Because of Age or has filed a charge or suit, testified,
24 participated, or assisted in any proceeding under the provisions of
25 ~~sections 48-1001 to 48-1009~~ the act.

26 (4) It shall be an unlawful employment practice for an
27 employment agency to fail or refuse to refer for employment, or
28 otherwise to discriminate against any individual because of such

1 individual's age, or to classify or refer for employment any
2 individual on the basis of his or her age.

3 Sec. 7. Section 48-1005, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 48-1005. Any person who violates ~~any provision of~~
6 ~~sections 48-1001 to 48-1009~~ the Act Prohibiting Unjust
7 Discrimination in Employment Because of Age or who forcibly
8 resists, opposes, impedes, intimidates, or interferes with ~~such~~
9 ~~commission~~ the Equal Opportunity Commission or any of its duly
10 authorized representatives while engaged in ~~its or his~~ duties under
11 ~~sections 48-1001 to 48-1009~~ the act shall be guilty of a Class III
12 misdemeanor. No person shall be imprisoned under this section
13 except for a second or subsequent conviction.

14 Sec. 8. Section 48-1006, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 48-1006. Sections 48-1001 to ~~48-1009~~ 48-1010 shall be
17 known and may be cited as the Act Prohibiting Unjust Discrimination
18 in Employment Because of Age.

19 Sec. 9. Section 48-1007, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 48-1007. ~~Sections 48-1001 to 48-1009~~ The Act Prohibiting
22 Unjust Discrimination in Employment Because of Age shall be
23 administered by the Equal Opportunity Commission as established by
24 section 48-1116. The commission shall have the power (1) to make
25 delegations, to appoint such agents and employees and to pay for
26 technical assistance, including legal assistance, on a
27 fee-for-service basis, as it deems necessary to assist it in the
28 performance of its functions under ~~sections 48-1001 to 48-1009~~ the

1 act; (2) to cooperate with other federal, state, and local
2 agencies, and to cooperate with and furnish technical assistance to
3 employers, labor organizations, and employment agencies to aid in
4 effectuating the purposes of ~~sections 48-1001 to 48-1009~~ the act;
5 (3) to make investigations, to issue or cause to be served
6 interrogatories, and to require keeping of records necessary or
7 appropriate for the administration of ~~sections 48-1001 to 48-1009~~
8 the act; and (4) to bring civil action in its name in any court of
9 competent jurisdiction against any person deemed to be violating
10 ~~any of the provisions of sections 48-1001 to 48-1009~~ the act to
11 compel compliance with the ~~provisions of sections 48-1001 to~~
12 ~~48-1009~~ act or to enjoin any such person from continuing any
13 practice that is deemed to be in violation of ~~sections 48-1001 to~~
14 ~~48-1009~~ the act. The commission may seek judicial enforcement
15 through the office of the Attorney General to require the answering
16 of interrogatories and to gain access to evidence or records
17 relevant to the charge under investigation.

18 Sec. 10. Section 48-1008, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 48-1008. Any person aggrieved by a suspected violation
21 of the ~~provisions of sections 48-1001 to 48-1009~~ Act Prohibiting
22 Unjust Discrimination in Employment Because of Age shall file with
23 the Equal Opportunity Commission a formal complaint in such manner
24 and form prescribed by the commission. The commission shall make
25 an investigation and may initiate an action to enforce the rights
26 of such employee under the ~~provisions of sections 48-1001 to~~
27 ~~48-1009~~ act. If the commission does not initiate an action within
28 thirty days after receipt of a complaint, the person aggrieved may

1 bring a civil action in any court of competent jurisdiction for
2 such legal or equitable relief as will effectuate the purposes of
3 ~~sections 48-1001 to 48-1009~~ the act. Filing of an action by either
4 the commission or the person aggrieved shall be a bar to the filing
5 of the action by the other.

6 Sec. 11. Section 48-1009, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 48-1009. In any action brought to enforce the ~~provisions~~
9 ~~of sections 48-1001 to 48-1009~~ Act Prohibiting Unjust
10 Discrimination in Employment Because of Age, the court shall have
11 jurisdiction to grant such legal or equitable relief as the court
12 may deem appropriate to effectuate the purposes of ~~sections 48-1001~~
13 ~~to 48-1009~~ the act, including judgments compelling employment,
14 reinstatement, or promotion, or enforcing liability for amounts
15 deemed to be unpaid minimum wages or unpaid overtime compensation.

16 Sec. 12. Section 48-1010, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 48-1010. (1) The state, governmental agencies, and
19 political subdivisions may be sued upon claims arising under the
20 Act Prohibiting Unjust Discrimination in Employment Because of Age
21 in the same manner as provided by such act for suits against other
22 employers.

23 (2) The state, governmental agencies, and political
24 subdivisions may be sued upon claims arising under the federal Age
25 Discrimination and Employment Act of 1967, as such act existed on
26 the effective date of this act, in the same manner as provided by
27 such act for suits against other employers.

28 Sec. 13. Section 48-1125, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 48-1125. Sections 48-1101 to ~~48-1125~~ 48-1126 shall be
3 known and may be cited as the Nebraska Fair Employment Practice
4 Act.

5 Sec. 14. Section 48-1126, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 48-1126. (1) The state, and governmental agencies, and
8 political subdivisions created by the state may be sued upon claims
9 arising under the Nebraska Fair Employment Practice Act in the same
10 manner as provided by such law for suits against other employers.

11 (2) The state, governmental agencies, and political
12 subdivisions may be sued upon claims arising under the following
13 federal law, as such acts existed on the effective date of this
14 act, in the same manner as provided by such acts for suits against
15 other employers:

16 (a) The Americans with Disabilities Act of 1990;

17 (b) Title VII of the Civil Rights Act of 1960;

18 (c) The Fair Labor Standards Act of 1938;

19 (d) The Family and Medical Leave Act; and

20 (e) Section 504 of the Rehabilitation Act of 1973.

21 Sec. 15. Sections 48-1219 to 48-1227.01 and this section
22 shall be known and may be cited as the Nebraska Equal Pay Act.

23 Sec. 16. Section 48-1220, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 48-1220. As used in ~~sections 48-1219 to 48-1227.01~~ the
26 Nebraska Equal Pay Act, unless the context otherwise requires:

27 (1) Employee shall mean any individual employed by an
28 employer, including individuals employed by the state or any of its

1 political subdivisions including public bodies;

2 (2) Employer shall mean any person engaged in an industry
3 who has twenty-five or more employees for each working day in each
4 of twenty or more calendar weeks in the current or preceding
5 calendar year, any agent of such person, and any party whose
6 business is financed in whole or in part under the Nebraska
7 Investment Finance Authority Act, and includes the State of
8 Nebraska, its governmental agencies, and political subdivisions,
9 regardless of the number of employees, but such term shall not
10 include the United States, a corporation wholly owned by the
11 government of the United States, or an Indian tribe;

12 (3) Wage rate shall mean all compensation for employment
13 including payment in kind and amounts paid by employers for
14 employee benefits as defined by the commission in regulations
15 issued under ~~sections 48-1219 to 48-1227~~ the Nebraska Equal Pay
16 Act;

17 (4) Employ shall include to suffer or permit to work;

18 (5) Commission shall mean the Equal Opportunity
19 Commission; and

20 (6) Person shall include one or more individuals,
21 partnerships, limited liability companies, corporations, legal
22 representatives, trustees, trustees in bankruptcy, or voluntary
23 associations.

24 Sec. 17. Section 48-1221, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 48-1221. (1) No employer shall discriminate between
27 employees in the same establishment on the basis of sex, by paying
28 wages to any employee in such establishment at a wage rate less

1 than the rate at which the employer pays any employee of the
2 opposite sex in such establishment for equal work on jobs which
3 require equal skill, effort and responsibility under similar
4 working conditions. Wage differentials are not within this
5 prohibition where such payments are made pursuant to: (a) An
6 established seniority system; (b) a merit increase system; or (c) a
7 system which measures earning by quantity or quality of production
8 or any factor other than sex.

9 (2) An employer who is paying a wage differential in
10 violation of the ~~provisions of sections 48-1219 to 48-1227~~ Nebraska
11 Equal Pay Act shall not, in order to comply with it, reduce the
12 wage rates of any employee.

13 (3) No person shall cause or attempt to cause an employer
14 to discriminate against any employee in violation of the ~~provisions~~
15 ~~of sections 48-1219 to 48-1227~~ act.

16 (4) No employer may discharge or discriminate against any
17 employee by reason of any action taken by such employee to invoke
18 or assist in any manner the enforcement of the ~~provisions of~~
19 ~~sections 48-1219 to 48-1227~~ act.

20 Sec. 18. Section 48-1222, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 48-1222. (1) The commission shall have the power and the
23 duty to carry out the ~~provisions of sections 48-1219 to 48-1227~~
24 Nebraska Equal Pay Act.

25 (2) For this purpose, the commission shall have the power
26 to enter the place of employment of any employer to inspect and
27 copy payrolls and other employment records, to compare character of
28 work and operations on which persons employed by ~~him~~ such person

1 are engaged, to question such person, and to obtain such other
2 information as is reasonably necessary to the administration and
3 enforcement of the ~~provisions of sections 48-1219 to 48-1227~~ act.

4 (3) The commission shall have power to examine witnesses
5 under oath, and to require by subpoena the attendance and testimony
6 of witnesses and the production of any documentary evidence
7 relating to the subject matter of any investigation undertaken
8 pursuant to this section. Witnesses summoned by the commission
9 shall be paid the same fees as are allowed witnesses attending the
10 district court. In the event of the failure of a person to attend,
11 testify or produce documents under or in response to a subpoena,
12 the district court for the county in which the appearance is
13 requested on application of the commission may issue an order
14 requiring such person to appear before the commission, or to
15 produce documentary evidence, and any failure to obey such order of
16 the court may be punished by the court as a contempt thereof.

17 (4) The commission is authorized to endeavor to eliminate
18 pay practices unlawful under the ~~provisions of sections 48-1219 to~~
19 ~~48-1227~~ act, by informal methods of conference, conciliation and
20 persuasion, and to supervise the payment of wages owing to any
21 employee under the ~~provisions of sections 48-1219 to 48-1227~~ act.

22 (5) The commission shall have power to issue such
23 regulations, not inconsistent with the purpose of ~~sections 48-1219~~
24 ~~to 48-1227~~ the act, as it deems necessary or appropriate to carry
25 out ~~its provisions~~ the act.

26 Sec. 19. Section 48-1223, Reissue Revised Statutes of
27 Nebraska, is amended to read:

28 48-1223. (1) Any employer who violates ~~the provisions of~~

1 section 48-1221 shall be liable to the employee or employees
2 affected in the amount of their unpaid wages, and, in instances of
3 willful violation, in employee suits under subsection (2) of this
4 section up to an additional equal amount as liquidated damages.

5 (2) Action to recover such liability may be maintained in
6 any court of competent jurisdiction by any one or more employees
7 for and in behalf of himself, herself, or themselves and other
8 employees similarly situated. The court in such action shall, in
9 cases of violation in addition to any judgment awarded to the
10 plaintiff or plaintiffs, allow a reasonable attorney's fee to be
11 paid by the defendant, and costs of the action.

12 (3) No agreement by any such employee to work for less
13 than the wage to which such employee is entitled under the
14 ~~provisions of sections 48-1219 to 48-1227~~ Nebraska Equal Pay Act
15 shall be a bar to any such action or to a voluntary wage
16 restitution of the full amount due under the ~~provisions of sections~~
17 ~~48-1219 to 48-1227~~ act.

18 (4) At the written request of any employee claiming to
19 have been paid less than the wage to which he or she may be
20 entitled under the ~~provisions of sections 48-1219 to 48-1227~~ act,
21 the commission may bring any legal action necessary on behalf of
22 the employee to collect such claim for unpaid wages. The
23 commission shall not be required to pay the filing fee, or other
24 costs, in connection with such action. The commission shall have
25 power to join various claims against the employer in one cause of
26 action.

27 (5) In proceedings under ~~the provisions of~~ this section,
28 the court may order other affirmative action as appropriate,

1 including reinstatement of employees discharged in violation of the
2 ~~provisions of sections 48-1219 to 48-1227~~ act.

3 (6) The commission shall have power to petition any court
4 of competent jurisdiction to restrain violations of section 48-1221
5 and for such affirmative relief as the court may deem appropriate,
6 including restoration of unpaid wages and reinstatement of
7 employees, consistent with the purpose of ~~sections 48-1219 to~~
8 ~~48-1227~~ the act.

9 Sec. 20. Section 48-1224, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 48-1224. Court action under the ~~provisions of sections~~
12 ~~48-1219 to 48-1227~~ Nebraska Equal Pay Act may be commenced no later
13 than four years after the cause of action accrues.

14 Sec. 21. Section 48-1225, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 48-1225. Every employer subject to the ~~provisions of~~
17 ~~sections 48-1219 to 48-1227~~ Nebraska Equal Pay Act shall make,
18 keep, and maintain such records of the wages and wage rates, job
19 classifications, and other terms and conditions of employment of
20 the persons employed by him or her, and shall preserve such records
21 for such periods of time, and shall make such reports therefrom as
22 the commission shall prescribe.

23 Sec. 22. Section 48-1226, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 48-1226. Every person subject to the ~~provisions of~~
26 ~~sections 48-1219 to 48-1227~~ Nebraska Equal Pay Act shall keep an
27 abstract or copy of ~~sections 48-1219 to 48-1227~~ the act posted in a
28 conspicuous place in or about the premises wherein any employee is

1 employed. Employers shall be furnished copies of abstracts of
2 ~~sections 48-1219 to 48-1227~~ the act by the state on request without
3 charge.

4 Sec. 23. Section 48-1227, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 48-1227. (1) Any person who violates ~~any provision of~~
7 ~~sections 48-1219 to 48-1227~~ the Nebraska Equal Pay Act, or who
8 discharges or in any other manner discriminates against any
9 employee because such employee has made any complaint to his or her
10 employer, the commission, or any other person, or has instituted,
11 or caused to be instituted any proceeding under or related to
12 ~~sections 48-1219 to 48-1227~~ the act, or has testified or is about
13 to testify in any such proceeding, shall be guilty of a Class III
14 misdemeanor.

15 (2) Any employer who violates the ~~provisions of sections~~
16 ~~48-1219 to 48-1227~~ act by failing to keep the records required
17 hereunder, or to furnish such records to the commission upon
18 request, or who falsifies such records, or who hinders, delays, or
19 otherwise interferes with the commission in the performance of its
20 duties in the enforcement of the ~~provisions of sections 48-1219 to~~
21 ~~48-1227~~ act, or refuses official entry into any place of employment
22 which it is authorized by the ~~provisions of sections 48-1219 to~~
23 ~~48-1227~~ act to inspect, shall be guilty of a Class V misdemeanor.

24 Sec. 24. Section 48-1227.01, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 48-1227.01. (1) The state, governmental agencies, and
27 political subdivisions may be sued upon claims arising under
28 ~~sections 48-1219 to 48-1227~~ the Nebraska Equal Pay Act in the same

1 manner as provided by such sections for suits against other
2 employers.

3 (2) The state, governmental agencies, and political
4 subdivisions may be sued upon claims arising under the federal
5 Equal Pay Act of 1963, as such act existed on the effective date of
6 this act, in the same manner as provided by such act for suits
7 against other employers.

8 Sec. 25. Section 83-1066, Revised Statutes Supplement,
9 2000, is amended to read:

10 83-1066. Subjects in custody or receiving treatment
11 under the Nebraska Mental Health Commitment Act shall have the
12 right:

13 (1) To be considered legally competent for all purposes
14 unless they have been declared legally incompetent. The mental
15 health board shall not have the power to declare an individual
16 incompetent;

17 (2) To receive prompt and adequate evaluation and
18 treatment for mental illness and physical ailments and to
19 participate in their treatment planning activities to the extent
20 determined to be appropriate by the mental health professional in
21 charge of the treatment of such subjects;

22 (3) To refuse treatment, except such treatment as is
23 essential in the judgment of the medical health professional in
24 charge of such treatment to prevent the patient from causing injury
25 to himself, herself, or others or which will substantially improve
26 his or her mental illness;

27 (4) To communicate freely with all persons by sealed
28 mail, personal visitation, and private telephone conversations;

1 (5) To have reasonably private living conditions,
2 including private storage space for personal belongings;

3 (6) To engage or refuse to engage in religious worship
4 and political activity;

5 (7) To be compensated for their labor in accordance with
6 the federal Fair Labor Standards Act, 29 U.S.C. 206, on the
7 effective date of this act; as amended,

8 (8) To have access to a patient grievance procedure; ~~and~~

9 (9) To file, either personally or by counsel, petitions
10 or applications for writs of habeas corpus for the purpose of
11 challenging the legality of such subject's custody or treatment;
12 and

13 (10) To receive treatment in the least restrictive
14 alternative, including community-based treatment when determined
15 appropriate by the subject's planning team, the subject does not
16 oppose such treatment, and the placement can be reasonably
17 accommodated, taking into account the resources available to the
18 state, the needs of other persons with mental illness, and the
19 safety of the public.

20 Sec. 26. Section 83-1201, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 83-1201. Sections 83-1201 to 83-1226 and section 28 of
23 this act shall be known and may be cited as the Developmental
24 Disabilities Services Act.

25 Sec. 27. Section 83-1202.01, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 83-1202.01. (1) The Legislature finds that present state
28 appropriations on behalf of community-based services to persons

1 with developmental disabilities are twenty-nine million dollars
2 below the amount which has been identified by the Department of
3 ~~Public Institutions~~ as being the minimum necessary to pay the
4 reasonable costs of providing such services to all Nebraskans who
5 are eligible to receive them. Of that total, eighteen million
6 dollars is required to bring services to an estimated one thousand
7 one hundred fifty-five persons who are presently waiting for
8 services and eleven million dollars is required to pay employees of
9 community-based providers of services on a parity with employees
10 performing essentially the same tasks in state institutions.

11 (2) The Legislature also finds that increasing the
12 present appropriation by the required amount in a single budget
13 period is not feasible but that the state must pursue full funding
14 of community-based developmental disability programs in a
15 reasonable timeframe. ~~Although Nebraska is presently committed to~~
16 ~~the goal of providing services to all eligible persons by July 1,~~
17 ~~1996, the Legislature finds that a more realistic goal is July 1,~~
18 ~~2000, and hereby commits itself and the state to attaining that~~
19 ~~goal.~~

20 (3) The Legislature finds that Nebraska is committed to
21 the goal of providing services to all eligible persons and will
22 continue to make it a priority to commit resources to such
23 services.

24 Sec. 28. Every person with developmental disabilities
25 shall have the right to receive services in the least restrictive
26 alternative, including community-based services when determined
27 appropriate by the person's planning team, the person does not
28 oppose such services, and the placement can be reasonably

1 accommodated, taking into account the resources available to the
2 state and the needs of other persons with developmental
3 disabilities.

4 Sec. 29. (1) It is the intent of the Legislature that
5 the State of Nebraska serve its disabled populations in the most
6 integrated and appropriate setting. The Legislature further finds
7 that there is a need to develop a plan to ensure the transition of
8 qualified individuals into community-based settings at a reasonable
9 pace and identify improvements that could be made by the state.

10 (2) The Department of Health and Human Services shall
11 develop and submit a comprehensive plan to the Clerk of the
12 Legislature by September 30, 2002, and by each September 30
13 thereafter. The comprehensive plan shall:

14 (a) Identify available community-based services in the
15 state and assess the extent to which such services are able to
16 serve individuals in the most integrated setting appropriate;

17 (b) Formulate a reliable estimate of the number of
18 individuals with disabilities currently institutionalized and
19 eligible for services in community-based settings;

20 (c) Review and identify available funding sources,
21 including both medicaid and other sources, to increase the
22 availability of community-based services, including any ongoing
23 efforts to coordinate access to such services;

24 (d) Assess the extent to which funding sources can be
25 organized into a coherent system of long-term care which affords
26 individuals reasonable and timely access to community-based
27 services, including recommendations to make services available in
28 the most integrated setting appropriate;

1 (e) Examine the operation of waiting lists, including any
2 recommendations to ensure that individuals are able to come off
3 waiting lists and receive needed community-based services at a
4 reasonable pace;

5 (f) Afford individuals with disabilities and their
6 families the opportunity to make informed choices regarding how
7 their needs can best be met in community-based or institutional
8 settings; and

9 (g) Identify needs which have not been met.

10 (3) The department shall provide an opportunity for
11 interested persons, including individuals with disabilities and
12 their representatives, to be integral participants in plan
13 development and followup. The department shall make affirmative
14 efforts to involve individuals with disabilities, and their
15 representatives, if appropriate, in the plan development and
16 implementation process, including the consideration of methods and
17 options to ensure constructive, ongoing involvement and dialogue in
18 the process.

19 Sec. 30. (1) The Department of Health and Human Services
20 shall file a written report with the Clerk of the Legislature
21 regarding placement and services for individuals with disabilities
22 in Nebraska by September 30, 2002, and by each September 30
23 thereafter. The report shall cover the time period of the
24 immediately preceding state fiscal year. The report shall gather
25 information regarding (a) individuals residing in an institution
26 who are or have waited to receive community-based services and (b)
27 individuals residing outside an institution who are or have waited
28 to receive community-based services.

1 (2) For individuals residing in an institution, the
2 report shall include information tabulated on a statewide basis, by
3 county of residence, and by state-operated facility. The tabulated
4 information shall include:

5 (a) The number of individuals residing in institutions on
6 July 1 of the immediately preceding state fiscal year;

7 (b) The number of individuals residing in institutions on
8 June 30 of the immediately preceding state fiscal year;

9 (c) The number of individuals residing in institutions
10 during the immediately preceding state fiscal year who received
11 community-based services;

12 (d) The number of individuals residing in institutions
13 during the immediately preceding state fiscal year who did not
14 receive community-based services, the reason that each individual
15 did not receive community-based services, and the projected cost
16 for each individual of providing such services;

17 (e) The number of individuals residing in institutions on
18 July 1 of the immediately preceding state fiscal year who were
19 waiting to receive community-based services, the reason that each
20 individual did not receive community-based services, and the
21 projected cost for each individual of providing such services;

22 (f) The number of individuals residing in institutions on
23 June 30 of the immediately preceding state fiscal year who were
24 waiting to receive community-based services, the reason that each
25 individual did not receive community-based services, and the
26 projected cost for each individual of providing such services.

27 (3) For individuals not residing in an institution, the
28 report shall include information tabulated on a statewide basis and

1 by county of residence. The tabulated information shall include:

2 (a) The number of individuals during the immediately
3 preceding state fiscal year who are or have been waiting to receive
4 community-based services;

5 (b) The number of individuals on July 1 of the
6 immediately preceding state fiscal year who were waiting to receive
7 community-based services, the reason that each individual did not
8 receive community-based services, and the projected cost for each
9 individual of providing such services; and

10 (c) The number of individuals on June 30 of the
11 immediately preceding state fiscal year who were waiting to receive
12 community-based services, the reason that each individual did not
13 receive community-based services, and the projected cost for each
14 individual of providing such services.

15 Sec. 31. Original sections 13-1102, 20-113, 48-1001 to
16 48-1010, 48-1125, 48-1126, 48-1220 to 48-1227.01, 83-1201, and
17 83-1202.01, Reissue Revised Statutes of Nebraska, and section
18 83-1066, Revised Statutes Supplement, 2000, are repealed.